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To: Senate Committee on Labor, Elections and Urban Affairs.
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: February 17, 2010
Re: SB 172, Annexation Law Changes

The League of Wisconsin Municipalities opposes SB 172, which makes the following two changes to annexation law:

- (1) Clarifies that territory annexed by the unanimous approval process must be contiguous to the annexing city or village; and
- (2) Restores the ability of towns to file actions contesting the validity of unanimous approval annexations when there is a question regarding whether the territory is contiguous.

The League supports the first item, because it reflects our understanding of current law and it clears up an ambiguity that some communities have used to annex non-contiguous territory. We've seen this in Merrimac and Medford. We agree this is an area of the law that needs to be clarified.

We absolutely oppose the second item. Section 2 of the bill creates a new problem by restoring the ability of towns to use taxpayer dollars to sue neighboring cities and villages over the validity of unanimous approval annexations when the town claims that contiguity is lacking. These are lawsuits that cities and villages will need to defend against and these are lawsuits that are currently not happening because state law prohibits towns from suing cities and villages to challenge a unanimous approval annexation.

We believe the Town Association's goal of prohibiting annexation of noncontiguous territory can be reached without restoring the ability of towns to file actions challenging unanimous approval annexations. The League would support this bill if it were amended to only clarify that unanimous approval annexations must be contiguous.

Under current law, a town may not challenge in court, on any grounds, any annexation by unanimous approval. This language was inserted into the annexation law by 2003 Wisconsin Act 317, which was compromise legislation that the Towns Association negotiated with the Builders Association and the Realtors Association. In return for giving up the right to sue cities and villages, the towns gained the following:

- ◆ A prohibition against municipalities annexing across county lines without town and county board approval.
- ◆ A requirement that municipalities make annual property tax setoff payments to towns for 5 years following an annexation.

Towns are now seeking to partially renege on this deal without offering cities and villages relief from any of the limitations on annexation that were part of the original deal.

We urge the Committee to pass an amended version of SB 172. This amended version would retain the bill's language clarifying that unanimous approval annexations must be contiguous, but would delete the language allowing towns to file actions challenging unanimous approval annexations.

Thanks for considering our comments and concerns.

Wisconsin Towns Association

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To: Senate Committee on Labor, Elections, and Urban Affairs
From: Richard J. Stadelman, Executive Director
Re: SB 172 changes to unanimous annexation
Date: February 16, 2010

Wisconsin Towns Association respectfully asks the Committee to recommend passage of SB 172 which makes changes to the unanimous annexation law under Sec. 66.0217 (2) and (11)(c) of Wis. Statutes.

SB 172 reverses *Town of Merrimac v. Village of Merrimac*, 753 N. W. 2d, 552, District IV Court of Appeals decision on May 22, 2008 that held the town did not have legal standing to challenge whether unanimous annexation in that case was contiguous to the city or village.

This bill provides on page 3 of the bill draft at lines 4 through 6, "No territory may be annexed by a city or village under this subsection unless the territory to be annexed is contiguous to the annexing city or village." Some city and village attorneys have indicated because the term "contiguous" does not appear in this subsection (Sec. 66.060217 (2) of Wis. Statutes) that unanimous annexations do not have to be contiguous. Further, because of the decision in *Merrimac* case cited above, there is no legal standing on the part of the town to challenge in court a noncontiguous unanimous annexation. Lines 8 through 9 of the bill on page 3 provide that towns would have legal standing to challenge whether a unanimous annexation is contiguous.

The Assembly committee has adopted an amendment (LRBa0751/1), a copy of which is attached to this memo, provides that if the town brings a legal challenge to a unanimous annexation on the grounds that it is not contiguous and the annexation is found to be contiguous that the town would be subject up to \$5,000 in actual attorney fees to the village or city plus court costs. This amendment is intended to keep towns from filing frivolous lawsuits to delay unanimous annexations. Our Association accepts this amendment to eliminate the threat of frivolous annexations.

If this bill is not adopted, more cities and villages will be approving unanimous annexations that are not "contiguous" to the city or village, such as the City of Medford as is evidenced by the attached map and article did when it annexed a golf course nearly three quarters of a mile from the city boundary, creating a city island in two towns.

We respectfully request that the State Legislature pass SB 172 to stop these types of abuses under the unanimous annexation law as it is being interpreted and abused by cities and villages.



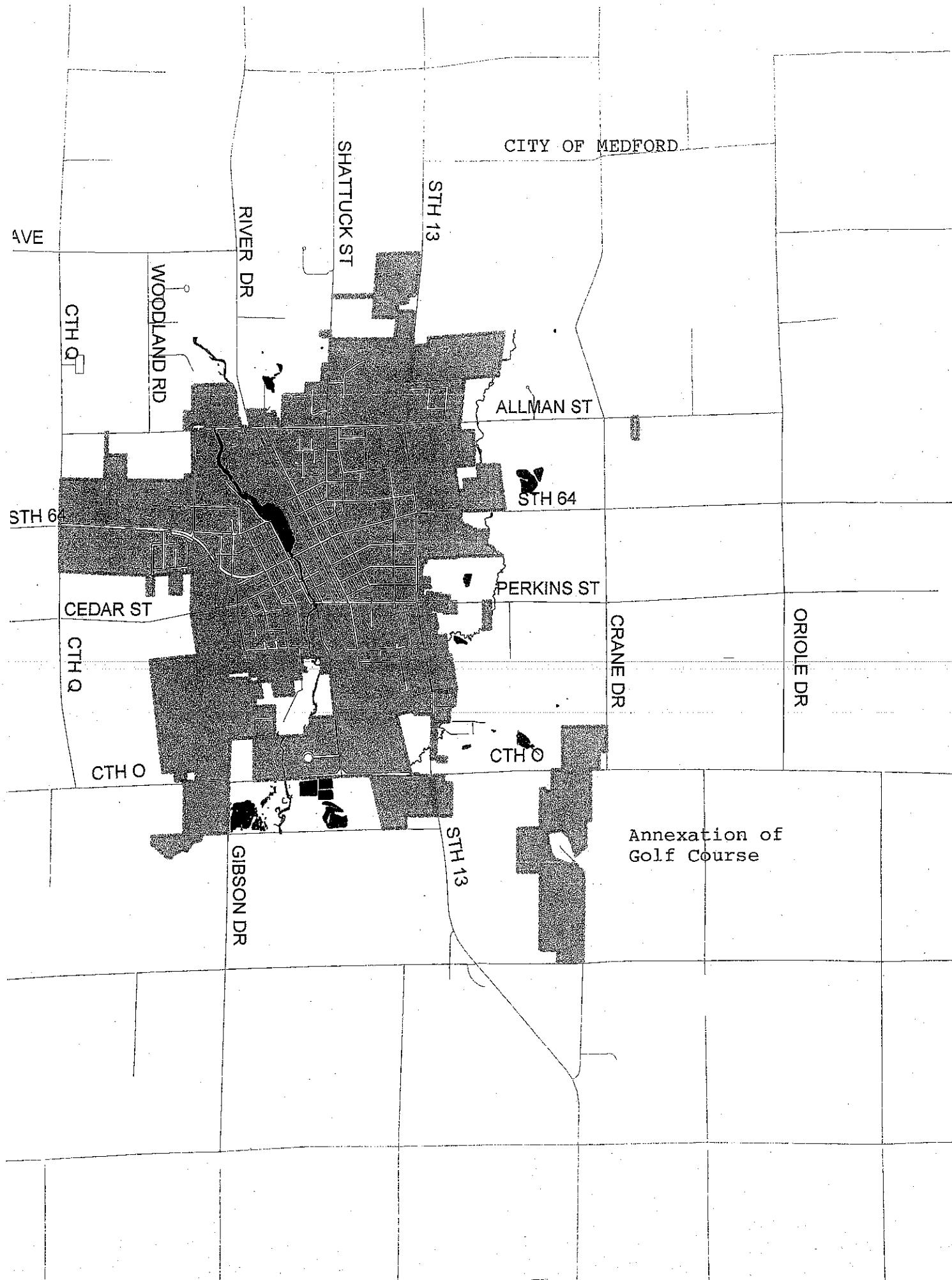
State of Wisconsin
2009 - 2010 LEGISLATURE

LRE
MEC

ASSEMBLY AMENDMENT 1,
TO 2009 ASSEMBLY BILL 239

October 16, 2009 - Offered by Representative JÖRGENSEN.

- 1 At the locations indicated, amend the bill as follows:
- 2 1. Page 3, line 11: after that line insert:
- 3 "SECTION 2m. 66.0217 (11) (d) of the statutes is created to read:
- 4 66.0217 (11) (d) With regard to an action challenging an annexation under sub.
- 5 (2) on the basis of contiguity, under par. (c), if a court finds that the challenged
- 6 annexation involves territory that is contiguous to the annexing city or village,
- 7 notwithstanding s. 814.04 (1), the court shall order the town to pay the annexing
- 8 city's or village's actual attorney fees, up to a maximum of \$5,000, plus costs."
- 9
- (END)



Commission approves golf course annexation

by Reporter Mark Berglund

The City of Medford Plan Commission approved an annexation request at its meeting Monday from the Black River Golf Country Club which will bring the 9-hole course and a total of approximately 200 acres into the city. The golf course property is currently located in three different towns—Medford, Little Black and Deer Creek. The request now goes to the city council for action at its August 18 meeting.

In the letter requesting annexation, club president Terry Eggelrecht, cited an anticipated future plan to link to the city's sewer and water system and the added value of city police and fire department coverage as one of the reasons for the move. He wrote about the challenge of getting a fair assessment for the operation with assessors from three different towns determining the worth.

"Is there any reason we wouldn't want to do this," commission member Dave Clark said. "Not that I can see," said Medford Mayor Mike DeChatelets. "That's the question," he said. "The annexation would be slightly different as the area does not directly border the city. A recent change in state law allows the colony to occur. The move would not bring the nearby roads into the city fold." So anyone from any part of Taylor County could annex to the city?"

DeChatelets said her mother is currently involved in the golf course property is currently



Black River

COUNTRY CLUB

a mix of usage with the nine holes taking up about 80 acres and the rest being devoted to facility buildings and agriculture land which is rented out. The land currently devoted to golf would be zoned G-1, a designation given to the Tee-Hi Golf Course in the city. The zoning class is also used for areas like schools and churches, which are public or semi-public areas expected to remain in that type of land usage. The agriculture land owned by the club would remain under an ag zoning class. City planner Bob Christianson said the difference in zoning does not change how the land is taxed as it is assessed for current use, not future potential.

The commission approved the plans for an addition to Our House, a senior assisted living facility on Hwy 64 near the high school. The addition would add 24 units to the north and a common area to the south. The additional space will allow the facility to upgrade its memory care unit. The commission decided to waive a parking space formula requirement aimed at apartment buildings as indications are the senior buildings facility would not need as much parking. In addition to saving cost, waiving the parking stall rule would also save many of the trees surrounding the building. Commission member Pat DeChatelets said her mother is currently



Mike Wellner

The annexation would be slightly different as the area does not directly border the city. A recent change in state law allows the colony to occur. The move would not bring the nearby roads into the city fold. "So anyone from any part of Taylor County could annex to the city?"

Zimmerman asked. "Basically, that's true," city attorney Ken Schneige said. The golf course property is currently

at Our House and she has not seen a parking problem with the current layout, even on high visitor volume days.

* The commission approved the site plan for an addition to the Bone and Joint Clinic on Hwy 13. Commission member Tim Hansen noted the work on the addition is already underway before the commission's review. Christianson said city staff reviewed the plans prior to the start of construction and gave the go-ahead. He said there is no rule requiring site plan review by the commission before work begins. "I realize they are ahead of the horse. I would never allow it if I was concerned about the plan," Christianson said.

* The commission approved a definition to section 2.2 of the zoning code which reads "Ground floor near the floor that is normally located at ground level (a.k.a. first floor, ground floor) when referenced from the street that serves as the primary entrance to the building."

* The commission tabled a proposed change to the code which would require building the primary structure on a residential lot before building garage at the site. The commission felt there would be enough difference with each situation where the issue would arise so they did not want to be tied down by a new addition to the code.

Hammel crash injures four

by Reporter Mark Berglund

A two-vehicle accident in the Town of Hammel injured four people Thursday July 30. The accident occurred at 8:52 a.m. on CTH E, 150 feet south of Perkinstown Ave. Drivers Tammi J. Stunkel, 38, Sheldon and Marissa E. Meyer, 19, Medford, and a passenger in the Stunkel vehicle, Tristin J. Stunkel, 13, Sheldon, were transported for medical treatment while another passenger in the Stunkel vehicle, Katlyn L. Stunkel, 6, Sheldon, was not transported for treatment. Memorial Health Center reports neither Stunkel nor Meyer were patients at its facility. Another passenger, Ryan L. Stunkel, 8, Sheldon, was uninjured. According-to-the-accident-report, the Stunkel vehicle was southbound when Meyer's northbound vehicle entered its lane of traffic making a left turn. The Meyer vehicle came to rest in the east ditch. The report said the officer inter-

viewed Meyer at the scene. Meyer was going to turn into her grandmother driveway and had coughed from fluid in her mouth following a dentist visit. She said she opened her eyes and the air bag went off. Meyer said she had a local anesthetic while at the dentist. She said she had her signal on and her headlights on and may have moved over but could not recall for certain. She said she closed her cell phone and put it in her lap and had not taken her eyes off the road to do so. The report said the officer interviewed Tammi Stunkel after clearing the scene. Stunkel said she and the Meyer vehicle appeared suddenly and she thought about taking the ditch but decided to hold straight instead. Stunkel said the other vehicle did not signal and did not have its headlights on. Meyer was issued a citation for unsafe turn/lane deviation.

The Medford Area Fire Department also responded to the scene.

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Agency #2

Annexation tees off town officials

by News Editor Brian Wilson and
Reporter Mark Berglund

When push came to shove, Medford aldermen on Tuesday night looked out for city residents and the potential for city growth first and in the process raised some hard feelings from neighboring town officials.

The council was being asked to give final approval to annexation to a 210-acre parcel spread across the towns of Medford, Little Black, and Deer Creek. The parcel is owned by the Black River Country Club and includes the current 9-hole golf course and additional property on which they hope to expand to 18 holes and sell residential lots.

What set this annexation apart from others in the city is that the property does not border Medford. While city attorney Ken Schmiege was specific in his wording noting the only way you can create an island is if the town is surrounded by the city, the parcel otherwise resembles an island in that it is detached from the rest of the city.

Historically, annexations had to border the city which they were being annexed to. However, with the removal of the word contiguous from the state's annexation rules and a subsequent court ruling in the southern part of the state affirming the interpretation of the law, the door is open to jump over parcels and annex land that does not border cities.

The annexation had already come through the city's planning commission and it would have taken a super majority of six of the eight aldermen to override the planning commission's recommendation.

See CITY on page 3



Photo by Brian Wilson

Ribbon cutting
Health Center officials cut the ribbon officially opening the new Memorial Health Center Kidney Care/Dialysis Health Center in Medford. The facility is located in the south end of the remodeled professional building on MHC's Remodelled Campus. Participating in the ribbon cutting were (l to r): Chip Courtney, MHC board president; Haley Olson, president and CEO of MHC; Dr. Robert Millican, Kidney Care Center manager; Gregg Weichelt, Aspirus manager of dialysis services and Kaaron Keene, vice president of patient care services. See pages 10 and 11 for story and more pictures.

NJTC wants Green Institute for Medford

Reporter Karyn Eckert

Pearning, NJTC has seen a 73 percent increase in full-time equivalent students at the Medford campus.

Leaders from Northcentral Technical College (NTC)

City council approves Black River Country Club annexation request

Continued from Page 1

Chuck Zenner of the Town of Little Black called on the city to do what is neighborly and either deny the annexation request or at the very least delay it.

On Monday evening, a delegation from the Town of Little Black met with the board of directors from Black River Country Club to try to convince them to change their minds and withdraw the request.

Terry Eggebrecht, president of Black River Country Club, told aldermen on Tuesday that the golf course was committed to proceeding with the annexation and asked for the council to approve it.

"All we are asking is for the city to put it on hold for a while," Zenner said. He quoted from an e-mail from Rep. Mary Williams regarding the matter and noted a proposal to reinsert the bordering requirement was in committee in the Assembly.

"If this loophole did not exist, we wouldn't be here," Zenner said, noting the town does not want to lose the tax base. Under state law, the city must pay the municipal portion of the local property taxes for five years on any annexation.

According to Zenner, the town was not given a chance to voice their concerns, he said the town clerk was told she could not talk at the planning commission meeting on the subject, a point that Wellner disputed, and only learned of the commission meeting where the annexation was to be considered the Friday before the Tuesday meeting.

It was later clarified that the clerk was advised by the town's assessor that she was not able to speak at the public hearing on the annexation.

He said while the city may be able to annex the parcel it also has the ability to not annex it and called on

the city to have a spirit of neighborliness.

"When I look at a loophole I ask is it an oversight or did the legislature intend to do it ... I look at it as the law is today. It looks to me like the city has the right to do it," Schmiege said.

"Why would we tell them no?" asked mayor Mike Wellner.

"What's our answer to the constituents we serve? Someone has come to us asking for annexation and each of us has to answer to our constituents," he added.

The city did not initiate the annexation effort, and is prohibited from soliciting property owners for annexation. One of the reasons given for the annexation was the potential for future sewer and water needed for development of lots to fund the expansion of the golf course. It is much easier for the city to provide the services.

The question then was raised by alderman Pat DeChatelets about who would pay for the sewer and water extension. Under city policies the extension would be paid for through special assessments on the adjoining property owners. If, and until those properties either annexed to the city or hooked to the city services the special assessments would be deferred.

However, the golf course isn't asking for services at this time.

"We may be 7 or 8 years down the road with development. We would fund nine holes by selling lots and we feel there would be more value if they were served by city water and sewer," Eggebrecht said.

"Have we ever denied an annexation of property because of sewer and water issues?" asked alderman Peggy Kraschnewski. "We have a private property owner who wants to annex to the city. We have a recom-

mendation from the plan commission. There is no basis to deny," she said.

The annexation request generated some strong emotions. "You wonder why you don't get rural support, this is just another stab at the towns," said Town of Little Black supervisor Al Peissig. To which Wellner replied, "I wonder if the towns would have a good neighbor policy if they were gaining 210 acres?"

"I still have not heard why we would deny this. We are a conservative county which believes in private property rights," said alderman Greg Knight.

"We are criticized for not growing. What happens in 5-6-7 years if they have 18 holes and 10 homes on those lots and people ask why we didn't annex it in when we had the chance?" asked Wellner.

Aldermen voted to approve the annexation request on a 5-2 vote with Mike Bub and DeChatelets opposed.

Bub noted he was bothered by the tight time frame getting the annexation passed.

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